

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA
RENO, NEVADA**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	Case No.: 3:14-cr-00025-HDM-VPC
)	
vs.)	
)	MINUTES OF COURT
LAWRENCE KOMINEK,)	
)	
Defendant.)	April 15, 2015
_____	/	

PROCEEDINGS: SENTENCING

PRESENT:
THE HONORABLE HOWARD D. McKIBBEN, SENIOR U.S. DISTRICT JUDGE

Deputy Clerk: Paris Rich Reporter: Donna Davidson

Counsel for Plaintiff: Megan Rachow, AUSA and James Keller, AUSA

Counsel for Defendant: John Neil Stephenson, Esq.

At 9:55 a.m., the Court convenes.

Megan Rachow and James Keller are present on behalf of the Government.

John Neil Stephenson is present with the Defendant (In Custody).

U.S. Probation Officer Christopher DeRicco is present.

The parties confirm that other than as set forth in the parties' sentencing memorandums, there are no factual errors or objections to calculations contained in the Presentence Investigation Report Revised March 6, 2015 (PSR).

The Court addresses the outstanding motions in this matter.

As to [75] Defendant's Motion to Exclude Polygraph Test Results, the Court recites findings.
IT IS ORDERED, the Defendant's [75] Motion is GRANTED.

The Court addresses [67] Defendant's Motion to Disqualify. Mr. Stephenson and Ms. Rachow present arguments. The Court recites findings.

IT IS ORDERED, with no objection by the Defense, and based upon Ms. Rachow's representations this date, Mr. Keller, as co-counsel, shall proceed with prosecution on the single issue of the two level enhancement pursuant to U.S.S.G. §3C1.1 for Obstruction or Impeding the Administration of Justice.

IT IS FURTHER ORDERED, Ms. Rachow shall vacate the courtroom during the obstruction of justice portion of the proceedings, and once a ruling has been entered by the Court, Ms. Rachow shall return to the courtroom and proceed with the balance of the Sentencing.

At 10:14 a.m., Ms. Rachow exits the courtroom.

The Court addresses [79] Defendant's Motion in Limine to Exclude Testimonial Hearsay Re: Scott Summerhays. **IT IS ORDERED**, [79] Motion is **DENIED**. **The Court will permit witness testimony in connection with what the Defendant's involvement may, or may not, have been in this matter.**

GARY L. McCAMEY, Polygraph Examiner, Federal Bureau of Investigation, called on behalf of the Government, is sworn, examined on direct by Mr. Keller, cross-examined by Mr. Stephenson, examined on redirect by Mr. Keller, and excused.

The Government's Exhibits G-1 through G-3 are received into evidence.

At 10:35 a.m., the Court stands at recess.

At 10:41 a.m., the Court reconvenes with all parties present.

GLENN G. BOOTH, Special Agent, Federal Bureau of Investigation, called on behalf of the Government, is sworn, examined on direct by Mr. Keller, and released subject to recall.

At 10:42 a.m., the Court stands at recess.

At 10:44 a.m., the Court reconvenes with all parties present.

GLENN G. BOOTH, Special Agent, Federal Bureau of Investigation, resumes the witness stand, is further examined on direct by Mr. Keller, cross-examined by Mr. Stephenson, examined on redirect by Mr. Keller, and excused.

JEFF PHEIFFER. Special Agent, Federal Bureau of Investigation, called on behalf of the Government, is sworn, examined on direct by Mr. Keller, cross-examined by Mr. Stephenson, examined on redirect by Mr. Keller, and excused.

The Defendant's Exhibit D-1 is received into evidence.

The Government rests.

The Defendant rests.

Mr. Keller presents closing argument with respect to the obstruction of justice enhancement.

Mr. Stephenson presents closing argument.

At 11:28 a.m., the Court recites findings.

IT IS ORDERED, a two level enhancement pursuant to U.S.S.G. §3C1.1 for Obstruction or Impeding the Administration of Justice is GRANTED and shall be applied. IT IS SO ORDERED.

Ms. Rachow returns to the courtroom.

The Court recites findings as to [78] Defendant's Motion to Partially Close the Sentencing Hearing and Seal Certain Documents. **IT IS ORDERED, [78] Motion is DENIED.**

The Sentencing proceeds.

The Court addresses the issues of the Defendant's role adjustment and the Defendant's acceptance of responsibility.

The Court recites findings with respect to the Defendant's acceptance of responsibility. **IT IS ORDERED, a two level reduction for acceptance of responsibility is GRANTED and shall be applied.**

The Court recites findings with respect to the Defendant's role adjustment. **IT IS ORDERED, the Defendant's request for a reduction for either minimal or minor participant adjustment is DENIED.**

On behalf of the Defendant, Mr. Stephenson presents argument.

The Defendant presents statements on his own behalf.

On behalf of the Government, Ms. Rachow presents argument.

At 11:56 a.m., the Court recites findings.

Sentence is imposed as to Counts One and Two of the Superseding Indictment filed June 4, 2014. **See separate Judgment for details.**

The Defendant acknowledges receipt from the U.S. Probation Office of written conditions of supervision.

The Defendant is advised of his rights regarding an appeal. The Defendant shall have 14 days from the date the Judgment is entered to file such notice of appeal. The Court and counsel confer.

Mr. Stephenson confirms that in the event the Defendant desires to file a notice of appeal, he agrees to file such notice timely and, then, if necessary, he will file a motion to withdraw as counsel with a request for new counsel on behalf of the Defendant.

At the Government and the Defendant's request, **IT IS ORDERED, a Revised PSR shall be prepared by the U.S. Probation Office consistent with the Court's findings and orders this date.**

The Defendant is remanded to custody.

At 12:11 p.m., the Court adjourns.

LANCE S. WILSON, CLERK

By: /s/ Paris Rich

Deputy Clerk